IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 890 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SUMANRAI HARIBHAI & CO. & 4 - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
None for Opponent(s) : 1 - 2.
NOTICE SERVED for Opponent(s) : 1 - 2, 4,
MR BR SHAH for Opponent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 19.03.1993 passed by the learned Special Judge & Addl. Sessions Judge, Junagadh in Special Criminal Case No.2 of 1988 whereby, the respondents – accused persons were acquitted of the

charges levelled against them.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 15.10.1983 the Agricultural Inspector of the appellant – State carried out inspection at the shop of respondent no. 1 and collected three samples of “Super Phosphate” Fertilizer for carrying out necessary examination after completing necessary formalities thereto. One of the three samples so collected was sent to the Laboratory at Junagadh for examination. On examination, the said sample of Fertilizer was found to be sub-standard and, therefore, on 06.01.1984 Notice was issued to the respondent no. 1. Respondent no. 1 gave his reply to the said notice. Thereafter, show-cause Notice was issued to the respondents and, ultimately, the impugned complaint was filed against them.

2.2 Necessary investigation was carried out and at the end of investigation charge-sheet was filed against the respondents before the Court of learned Special Judge, Junagadh. Trial was conducted against them. In order to prove the guilt against the respondents, the prosecution has examined two witnesses namely, PW – 1 Bhikhubhai Hirabhai Sagarka at Exhibit – 21 and PW – 2 Keshavji Parsottambhai Bharadva at Exhibit – 23 and has also relied upon several documentary evidence. At the end of trial, the learned Judge acquitted the respondents of the charges levelled against them.

3.0 Heard learned counsel for the respective parties and

perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances,

> to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 In the impugned judgment and order, the trial Court has recorded a finding of fact that while collecting the sample from the shop of the respondents, the complainant – Agricultural Inspector has not followed the mandatory provision of collecting the sample in presence of '*panchas'*. The said fact has also been admitted by the complainant himself in his cross-examination. Apart from that the Report of the Analyst which was produced on record also could not be relied upon as the same was not prepared by an Expert as required under Section 293 of the said Act. Thus, there were serious lapses on the part of the prosecution case.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against them. In my view, the findings

recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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